



**WASHINGTON
BEER & WINE
WHOLESALEERS
ASSOCIATION**

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Executive Director

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December 12, 1988

Dear Fellow Wholesalers:

As you know, we are in the fight of our lives to maintain the Cash Law at the Washington State Legislature. It is a fight we can win, but only if we all do our part.

First, how did the effort to abolish the Cash Law and allow up to thirty days credit on beer and wine get started? It happened as a part of a comprehensive review of all the liquor laws, including the Tied House provisions, that was initiated by the House of Representative's Committee on Labor and Commerce. Committee Chairman Art Wang began the study at the suggestion of Steve Wehrly, lobbyist for Miller Brewing Company, who felt Washington's liquor laws needed a complete overhaul. Once the "Tied House" section of the law was under review, the Grocers Committee of the Washington Retail Association, primarily consisting of Safeway, jumped in and requested the law be changed to allow wholesalers to extend thirty days credit for beer and wine to retailers. The Washington Food Dealers Association, which at first also opposed credit, has changed its position and now also wants thirty days credit.

Our Association and its members have testified before the House Committee on four occasions against allowing the extension of credit to retailers. It now appears that legislation to allow credit will be introduced in the House, so we must fight hard to keep it in the Committee and to kill it on the floor, if that becomes necessary.

Second, we must execute our plan to defeat this bill. That means building a coalition of friends who would also be harmed by this proposed legislation and contacting our legislators. Enclosed is a copy of the white paper Phil Wayt prepared on the Cash Law. Read it and familiarize yourself with it. You will need to understand this issue completely to effectively make your case. If you have any questions call Dick Ducharme or Phil Wayt.

Third, contact the following people in your area:

A. Two or more tavern owners. The Tavern Owners Association already opposes the bill. Explain to them that in states where credit is allowed, only large supermarkets get it. Point out that because credit increases your costs and every retail customer pays the same price for beer and wine, the customer who doesn't get credit will pay more for product and subsidize the cost of credit for his large competitor whose cost will go down because he doesn't have to finance his inventory. Get them to agree to contact their legislators to oppose the bill.

PLAINTIFF'S EXHIBIT	
CASE NO.	CV04-0360P
EXHIBIT NO.	084

WBW-001297

EXHIBIT NO. 241 Date: 8/1/05

Deposition of Phillip Wayt
CONNIE CHURCH, Court Reporter

WBWV-001297

B. Two or more small retail grocers or convenience store owners who won't get credit. The same arguments apply to them as the tavern owners. The legislation discriminates against small retailers and would result in their subsidizing their much larger competition.

C. Union houses should contact and explain this proposal to your union employees and your local teamster business agent. Explain that credit threatens your business and therefore, their jobs. Credit would accelerate consolidation and eliminate local ownership and employment. Get the employees and their business agent to contact the State Council of Teamsters and request the Union oppose any bill authorizing credit. Also get them to join with you in contacting your local legislators and asking them to oppose credit.

D. Others who should oppose credit are: Small Restaurants for the same reason as taverns; Washington wineries who act as their own wholesalers; and micro breweries.


E. Contact your local legislator before the session begins January 9th. Arrange a meeting with him or her, along with a couple of small grocers if possible, a tavern owner and a local union official. The more local support you can get, the better. Make sure anyone you take along understands the issue and will also urge opposition to any credit law.

It is critical that each of you do your part if we are to win this battle. If you don't know your legislators, call Dick in Seattle (283-5625) and he will fill you in on them. Remember, it is best to contact them while they are home now. Set up a breakfast or lunch or other meeting time.

Enclosed along with the white paper is the list of members of the House and Senate Committees who will consider any credit law. These members must be contacted immediately if they live in your area. Meetings have already been set up by Dick to contact many of them. The rest will be contacted before the session begins.

Remember, it is our businesses that are at stake in this battle and we are our own best lobbyists. I will be checking with you on your progress in completing our program. I'm counting on all of you to do your part.

Sincerely,


John Meyers, President

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CASH LAW WHITE PAPER

Prepared by Phillip H. Wayt
Executive Director
Washington Beer & Wine Wholesalers Association

WBWWA has always supported strict, uniform, fair and impartial enforcement of the laws and regulations governing the beer and wine business. The Association is keenly aware that this is a customer service oriented business, which exists only through public approval and acceptance. It therefore must be controlled and operated under a system with the public interest and welfare foremost in mind. With this in mind WBWWA supports and defends Washington's cash-on delivery laws and regulations.

In order to fully understand the rationale for the cash law, it is extremely important to remember that it is an integral part of the tied house act. This act is in substantially similar form to laws of nearly every state (including Washington). As a general rule, most of these laws were enacted shortly after passage of the Twenty First Amendment and repeal of Prohibition in 1933.

These tied house acts establish a three-tier distribution system, consisting of brewers and national importers on the first level, wholesalers or distributors on the second level and retail licensees on the third level.

The acts are wisely designed to prevent brewers, importers or wholesalers from engaging in market practices which would have the effect of inducing the retailer to purchase their products to the exclusion of others. The intent of the law and regulations are spelled out in an Attorney General's opinion in Washington which clearly states that credit is unquestionably a "thing of value" - a loaning of money if you will - and may not be given to the retailer.

It is no coincidence therefore that the majority of states, thirty to be exact, require cash or check for beer and wine delivery. Both states bordering Washington have such a law.

The policies of Washington (and other states) as expressed in the cash on delivery regulation, reflect the belief that competition for beer and wine sales not be based on practices such as extension of credit. The introduction of credit into the relationship between wholesalers and retailers would introduce an element which will threaten several cornerstones of our control system.

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For example, retailers who make unwise use of credit purchases for beer or wine will have a new incentive to promote the use of alcoholic beverages at a time when society is stabilizing or reducing consumption.

Another major adverse effect stemming from repeal of this regulation is that it would eliminate a major source of stability between wholesalers and retailers. Credit would create a financial interrelationship between wholesalers and retailers which would soon result in financial dependency on the part of the weaker economic unit.

For example, most wholesalers are much smaller economic units than many of their retail customers. Smaller wholesalers unable to compete with large wholesalers will feel compelled to consider providing various services to retailers if they can't match credit terms. The net result would create a most serious enforcement problem and a unhealthy marketplace situation. The potential for this practice is easily realized considering the economic influence some of the large chain operations can generate.

Purchasing power is certainly concentrated in these large retail operations and therefore it is probable that only large chain stores will be granted credit. Credit increases the cost of doing business and because all retailers in a marketing area pay the same price for beer and wine, the retailer who doesn't get credit will pay more for product and subsidize the cost of credit for his large competitor whose cost will go down because he doesn't have to finance his inventory. If anyone gets lost in the shuffle, if credit laws were adopted, it will be the small and independent groceries, small convenience stores, small taverns and restaurants who will rapidly become the endangered species. The big winner - the only winner - would be the large retail chains.

The same would be true even if, unlike the previous example, it is the wholesaler who uses the extension of credit to dominate the retailer.

It is not difficult to imagine that a retailer, having been the beneficiary of 30 day or generous credit arrangements from large wholesalers with sufficient capital to do so, might feel obligated to reciprocate by favoring the products of that wholesaler in a variety of ways. It is foreseeable that the loss of independence will lead to increased enforcement difficulties as well as the possible loss of public confidence in the system.

The potential of increased enforcement difficulties is one reason why the Washington State Liquor Control Board has not testified in support of draft legislation being considered by the House Commerce and Labor Committee of the Washington Legislature.

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Further, in a letter to WBWA Executive Director Phil Wayt September 16, 1988, the Legislative Liaison Officer for the WSLCB said, "As has been indicated in previous meetings and I believe in testimony during the August hearing wherein the Board did not voice support of H-48/49, the issue of whether or not the existing 'cash law' should be repealed is not of concern to the Board except in the event such repeal is made and it becomes necessary to add staff in order to facilitate more audits, handle additional complaints of violations, etc."

Let us not forget the who else loses if the law is changed. In 1986 in Washington approximately 3.15 million barrels of beer were sold - the equivalent of nearly 44 million cases. Requiring wholesalers to give 30 days credit on beer to retail customers would necessitate a minimum increase of 50 cents per case at the wholesale level. This alone would mean that the Washington consuming public would pay an additional \$22 million dollars for their malt beverage products. Likewise a staggering additional cost to the wine consumer would result from like increases in that segment of the industry.

Clearly, this would not be in the public interest. Indeed, the only interest served would be to the large chain stores who would have wholesalers subsidize their operations. Perhaps, even large convenience store organizations could open up new stores with the money realized through the float alone. This is not unrealistic conservatively considering that beer sales alone account of a minimum of 15 percent of all non-gas purchases at convenience stores. One brewery estimate ranks beer as the 2nd most purchased item at these stores. With 30 days credit these stores, many of whom turn their stock and average of 4 times a month, would collect 4 times from the consumer before paying for the first delivery from the distributor.

Some segments of our industry have complained that the retailers are the only segment of the industry required by regulation to pay cash on delivery, implying that the regulation was adopted primarily to benefit wholesalers.

To set the record straight, I would like to reiterate that the purpose of the regulation is to prevent objectionable practices and to insure fair competition in the marketplace in the public interest.

Furthermore, if the regulation were expanded to include the retail segment of the industry, there would really be no change in the present operation of the system. Rarely have retailers given credit to the consumer.

Some retailers also claim the cash regulation threatens the physical well being of their employees because they must keep extra cash on hand to pay for deliveries, thereby increasing the danger of robbery.

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This charge seems strange because over 90% of distributor sales are paid for by check - not cash. Also, in order to provide retailers with an alternative to keeping cash or pre-signed checks at their places of business to pay for beer and wine as it is delivered, provisions have been made for the use of a pre-paid deposit program authorized by the Washington State Liquor Control Board.

Further, some retailers have complained that the cash regulation imposes administrative hardships and inconvenience upon their operations.

In response, it must be considered by all segments of the industry that the license to handle alcoholic beverages is a privilege, not a right; and the successful operation of the state's control system over alcohol is prudent public policy and far outweighs any inconvenience to any segment of the industry.

Under a retailers license, it is the responsibility of the beer and/or wine retailer to provide proper supervision on their premises at all times to see that alcohol beverage laws are obeyed. A supervisory person of this calibre would be capable of receiving a shipment of beer and paying for it. It's a simple process.

To consider another aspect of the basic sales transaction, it is obvious that at some point the beer and wine delivered has to be paid for. When is the best time to do that? As a practical matter and for the sake of accuracy, responsibility and expedience, the best time for payment is when both parties have a sales invoice and each party has a complete record of the transaction. That is exactly what the present cash regulation requires.

Some retailers have tried to argue that alcoholic beverages should be treated just like any other consumer item in their stores, such as soft drinks, soap or potatoes. We submit that their argument has no merit.

What industry, other than the alcoholic beverage industry requires a license at all levels (manufacturer, wholesaler, and retailer)? The answer is none!

What product, other than alcoholic beverages, is the subject of amendments to the U.S. Constitution? None!

What product in stores, other than alcoholic beverages, can be banned by a vote of the people? Obviously, none! It is not likely to have a referendum on peanut butter.

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Alcoholic beverages are the most heavily regulated products in the nation - and rightly so. The great majority of people want a legal sale system that will work in the public interest because they certainly don't want to return to the chaos experienced during Prohibition.

Offsetting any inconvenience of the cash regulation on the retailers are the great benefits they receive from the Liquor Control Board regulations permitting wholesaler services on the retailer's premises.

After the sale is made to the retailer, wholesalers are permitted to price, rotate and restock product, build displays and provide point of sale advertising.

This means that the retailer has very little cost in handling the product. Basically the retailer accepts and inventories the delivery, pays by cash or check, and collects for the sale to the consumer at the checkout counter.

The most important consideration in all of the alcoholic beverage laws and regulations is not whether a particular requirement places inconvenience or burden on one segment of the industry or another - but that each requirement be designed to facilitate the best possible system in the public interest.

In the final analysis, retailers cannot convincingly argue that credit is necessary to their business. They have been operating successfully without credit and, as a rule, do not extend credit to their customers. It's curious that after doing business this way for over fifty years, that to a few retailers, it is now an inconvenience. The fact that the majority of states prohibit the extension of credit by wholesalers to retailers is ample proof that there is no underlying economic need for the injection of credit into the wholesaler/retailer relationship.

Credit on beer and wine sales to retailers would be just plain poor public policy and therefore, in the absence of strong compelling reasons as to why credit would be in the public interest, the cash regulation should continue in its present form.

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House Commerce and Labor Committee

	City	Home Telephone
Chairman- Representative Max Vekich	Cosmopolis	532-0222
Vice Chair-Rep. Grace Cole	Seattle	362-7409
Rep. Evan Jones	Sequim	786-7916 OLY.
Rep. Richard King	Everett	353-7526
Rep. June Leonard	Seattle	772-5687
Rep. John O'Brien	Seattle	722-5889
Rep. Margarita Prentice	Seattle	772-6480
Rep. Mike Patrick	Renton	631-2642
Rep. Curt Smith	Ephrata	787-2996
Rep. Sally Walker	Tacoma	565-4370
Rep. Charles Wolfe	Spokane	924-1412

Senate Economic Development and Labor Committee

Chair-Senator Eleanor Lee	Burien	243-2006
Vice Chair-Senator Ann	Acme	595-2380
Senator Jim Matson	Salah	697-3277
Senator Dan McDonald	Bellevue	455-5084
Senator Jerry Saling	Spokane	466-6699
Senator Jim West	Spokane	535-8347
Senator Paul Conner	Sequim	683-4918
Senator Patrick McMullen	Sedro Woolley	428-4683
Senator Bill Smitherman	Tacoma	752-6976
Senator Frank Warnke	Auburn	839-7998
Senator Al Williams	Seattle	633-3789

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